



Town of Jericho
Development Review Board

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Jericho Town Hall
Thursday, May 28, 2015

Minutes

Members Present: Barry King, Joe Flynn, Jeff York, Christopher West, Stephanie Hamilton
Members Absent: None
Guests: Michelle Patrick (Zoning Administrator), Amy Richardson (Secretary)
Public: Kevin Mahar, Britney Blair, Linda Campbell, Steve Hibbs, Martha Frost, Mary Lahiff, Carolyn Hallock

MEETING AGENDA

- A request by Kevin Mahar for a Conditional Use Review of an accessory apartment at 225 Nashville Road. The parcel is located at in the Agricultural Zoning District.
- Minutes from May 14, 2015.

Mr. King called the public meeting to order at 7:01 p.m. He read the warning. He asked the members to disclose any conflicts of interest. There was none. Mr. King read the Interested Persons Law. The public was sworn in at 7:05 p.m.

1. A request by Kevin Mahar for a Conditional Use Review of an accessory apartment at 225 Nashville Road. The parcel is located in the Agricultural Zoning District.

Applicant's Presentation

Mr. Mahar said the last time he was here for a Sketch Plan Review of a Planned Use Development (PUD), which he discovered was over his head. He said doing this accessory apartment was suggested, so he took the DRB's advice and that is the route he has taken. He said he has an accessory apartment. Mr. Mahar noted he also got a survey done to determine where the River Overlay District was, so that he was not putting a building inside the River Overlay District.

Board Questions

Mr. King asked about the square footage. Mr. Mahar stated it is 25' by 40', which is 1,000; but once you put walls, insulation, etc. it will be less than 1,000 square feet of livable space inside the building. Mr. West said his understanding is that it doesn't matter because you have up to 1,170 square feet at 75 percent. Ms. Patrick clarified the regulations also say that you are not allowed to go over 1,000 square feet in the regulations. Mr. West said most rules state not the interior walls, but the exterior wall dimensions. He stated that is the way it is treated by real estate agents measure, for future reference, noting it is still okay. Mr. King said the reason he wanted to bring this up is that this talks about 958 square feet, but it also says 40' by 25', which is 1,000 square feet.

Mr. West said he has a question about the porch; asking what the required setback is from the River Overlay District. Ms. Patrick said she just spoke with Mr. King about this prior to the hearing. She stated that while there are certain specifications about what can be constructed in the Flood Hazard Zone, it is unclear what can be constructed in the River Overlay District. She said there is a conditional use review procedure for an accessory structure, but that is only if it is within the buffer zone of the stream. Ms. Patrick stated he is well beyond that, which is 35', 50', or 100'. She said they have concluded that the regulations are a little unclear in that respect.

Mr. King said it is important for the hearing to establish the dimensions tonight. He said the DRB needs to know where we are with respect to the buffer zones with regard to the River Overlay District. Ms. Patrick said the overlay districts are in Section 6. She said what was established at the last hearing is that the district is delineated in a few different ways. She stated the way Mr. Mahar falls into it is because he is 100' back from the Special Flood Hazard Zone. Mr. King clarified that the plat shows the structure is more than 100' from the edge of the Federal Emergency Management Agency (FEMA) base flood elevation. Mr. Mahar agreed, saying the deck would have no foundation, just a footing into the ground for each corner.

Mr. King clarified it is more than 35' from the top of bank. Mr. Mahar agreed. Ms. Patrick said it is well more than that. Mr. King clarified it is also more than 50' from top of bank from any second order streams and 100' from top of bank from any third order streams. He said this quite likely is a third order stream and it is more than 100' from top of bank. He stated the criteria in Section 6.5.2.1.5 is that 100' from top of bank, so they don't fall into that buffer area; it is outside of that. Mr. King said it is in the River Overlay District, but outside of the buffer. He said that was important to get. He said Mr. West was asking about setbacks.

Mr. West said he just wanted to make sure the definition of the porch was allowed within the distance because it wasn't mentioned specifically. He stated it is obvious that the house was very carefully put right on that edge, so he just wanted to make sure the porch wasn't considered a structure that we had to check the distance. He said if it is a structure, we have to check the distance and it is okay because it is outside of that distance. Mr. West said for future reference, the zoning regulations allow you to build a shed on your property with no foundation at all, but as soon as there is something in the ground it is structural and you need a permit. Ms. Patrick clarified that is if it is less than 64 square feet. Mr. West agreed, noting this is more than that. He said that was the question he had and it has been answered.

Ms. Patrick said if this was in the flood way, it would be alright anyway because there is no structure; there is no foundation and no living space underneath the ground. Mr. West stated there is a screened porch, asking is that not a structure. Ms. Patrick asked the applicant to describe the construction of the deck. Mr. Mahar said he wants part of it screened, so that you can eat dinner without being eaten by mosquitoes. Mr. King clarified we are talking about the foundation. Mr. Mahar stated the entire thing will just have footings; there is no foundation to any part of the deck itself. Mr. Flynn clarified poured sonic tubes. Mr. Mahar agreed.

Mr. West said the question about 1,000 square feet has been answered. He noted one thing is not specifically stated in the regulations, but is part of the State law is that it be built to the Residential Building Energy Standard. He stated the Town is required not to provide a Certificate of Occupancy unless it is built to that standard. Mr. West said a lot of people don't know that, so it is great that he does know.

Mr. Flynn stated in the preliminary work there was a comment that they are waiting for approval from the DRB before getting the wastewater permit. He asked if they see a problem with obtaining the permit. Mr. Mahar said not, he just didn't want to waste the State's time and pay all the fees. Mr. Flynn clarified they will be able to put in at least a two bedroom system in there. Mr. Mahar agreed, saying everything is entirely written out; it just hasn't been sent out to the State. Mr. Flynn asked about the next-door neighbors have a primary replacement system. Mr. Mahar said it is all on the big plan and they don't overlap. Mr. Flynn clarified the neighbor's system is totally enclosed on their parcel. Mr. Mahar said their parcel, because it is smaller, does overlap onto his property, but the systems don't overlap into each other. Ms. Patrick displayed the plan. Mr. Flynn noted it is a State issue.

Ms. Hamilton said the first plan included a garage, but this one doesn't. She said with 1,000 square feet, is that just living, or could they later put up a garage. Ms. Patrick stated this is considered an accessory structure, so they could technically put up another accessory structure on the lot that is an accessory to the main house. She said it was brought to her attention that the curb cut they have, there is a limit of one curb cut per residence. She stated she was talking to the Highway Department and they would be willing to look at the property. Ms. Patrick said before they get an access permit for the driveway, they would need to approve it. She said he has already said we can approve this second curb cut on the property, even though there is a limit of one per parcel. She stated he will need to sit with the Town Administrator to make sure that is okay before proceeding.

Mr. West noted anything that we do will be conditioned upon that. Mr. Flynn asked about the curb cut, whether there is nothing in the Public Works Specifications that bases the number of curb cuts on the amount of frontage you have. Ms. Patrick said she hasn't seen anything. Mr. Flynn said that is the case in some towns. He stated there is a lot of frontage, so he can't see it being a big issue. Mr. West referred to Section 10.4.1 says curb cuts shall be limited to one per residential property. He clarified they will be discussing some kind of waiver.

Ms. Patrick said the Highway Department, Doug Siple, who approves access permits, said he recognized the property since the house was just constructed the previous year. She said because there was a previous curb cut for accessing the fields beyond where the proposed building envelope is that he would be willing to look at it. She stated he feels favorably about it because the sight lines are clear; it is in a real straight away on Nashville Road. Mr. Mahar agreed, saying it would be a real wasteful use of green space if he had to connect his driveway currently back and around.

Ms. Patrick stated it would just be conditioned on the access permit and he would be responsible for any improvements that would need to be made to the culvert. Mr. King noted that procedurally we would probably write it as a condition, but in fact it is conditioned anyway the regulations are written. He said the access permit is required before they can get a building permit.

Public Comment

Mr. Hibbs said they are the neighbors that have 1/3 of an acre amongst the 10 acres that surround them that are Kevin's. He stated he looked at some of the Town planning notes and wanted to comment that this area is zoned for agriculture. He said it is zoned for 10 acres per residence, or per owner. Mr. Hibbs said the field where the new house is proposed has been used for agricultural use. He said he has lived there 22 years and his wife lived there 27 years, saying they have noted many animals that seem to use the area for a wildlife corridor, listing the various animals and describing their path. He said it is close to the Mill Brook and the Town Plan says those areas need to be left undisturbed, vegetation and

soil should be used as a buffer zone. Mr. Hibbs said he questions whether a house would interfere with that activity. He stated the Town Plan calls for preservation of scenic resources and a call for preservation of traditional and historical landscape patterns, noting that has been traditionally an agricultural area. He noted he is not sure if it is part of Snowflake Bentley's property across the street from us originally, but he thinks probably it was part of their original holdings. Mr. Hibbs said when they look out their windows they have a beautiful view of the green mountains, unhampered by anything. He discussed the views in the area. He said according to the Town Report in 1989 all of Nashville Road was labeled a scenic resource. Mr. Hibbs said the visions of the Jericho Town Plan are to protect the natural environment and to preserve the rural and historical character of Jericho. He said over these years they have really enjoyed the beautiful scenery which that affords and they are hoping it can be preserved in that way.

Ms. Lahiff said the clarification she would like is about the 1,000 square foot property dwelling size because of the statement in the accessory apartment text. She read from the regulations, saying she interprets the maximum size of the dwelling should not exceed 750 square feet. She noted there is a subsequent statement that says not to exceed 75% of the floor area of the primary dwelling, or 1,000 square feet, but the first portion of that statement, in her interpretation of the text is that the maximum dwelling size should not exceed 750 square feet. Ms. Lahiff said she would like a comment on that if possible. She said she also, being a neighbor, she was born and raised on the property. She stated she agrees with Mr. Hibbs' statements about protecting the natural environment, the rural characteristics, and the historic aspects of the Town.

Ms. Lahiff stated this, to her, seems like a subdivision. She said she would be curious to know who is going to reside in that property; the longevity of their residency; and what will happen after they leave, does it then become a rental property and what happens at that point. She said to her it does not seem to be fitting in the characteristic of what an accessory apartment is intended to be; which is a mother-in-law apartment as she understands it. Ms. Lahiff stated a mother-in-law apartment does not have someone else's property in between the two residences.

Ms. Frost stated she has lived there for 42 years, noting in all the time they have lived there, her understanding is that the whole area they live in is 10 acre zoning. She said to allow what is being termed an accessory apartment, noting she agrees with Ms. Lahiff that it is not like an attached apartment to someone's house or a bungalow that is out back, it is a freestanding dwelling that is not even in the line of sight with the original landowner. She said to call this an accessory apartment seems a far stretch from what that means.

Ms. Frost stated that if you allow this house on a 10 acre lot and they have 10 acre zoning, then it is no longer 10 acre zoning. She said perhaps it does fall under the criteria of an accessory apartment, but it is a freestanding home. She discussed an example, asking if this ruling allows someone like that to build another accessory apartment that is a freestanding home; saying if so, then they have a subdivision in what was 10 acre zoning and it is in an agricultural zoned area.

Ms. Frost added, saying although these pictures are not broad in scope, on Fourth of July two years ago, we had torrential rains. She showed the DRB members pictures of flooding; noting the location of the flooding is east of where they are proposing to build this house and indicating the location on the plan. She stated the entire lower field was many feet under water.

Ms. Frost said perhaps it would not get into the structure, but it could compromise its stability. She said it was a real flood and her concern is they are going by what the regulations said, but none of them saw what that flood looked like. She discussed what was floating in the flood waters. Ms. Frost stated it could have wiped out that bank where the house is proposed. She said her concern is that it is just not a wise kind of thing on many levels.

Ms. Campbell said her concerns come down to the 1 in 10. She said when she first bought their house, she chose it because of the view and the open spaces and because there weren't a lot of houses around. She said she feels that a landowner should be able to do what they want to on their property within the zoning regulations. Ms. Campbell said if this falls truly within the regulations, then she feels like they need to accept that. She said Mr. Mahar has worked very hard to place the house so they can see the mountains, which she really appreciates. She said if we have to change some regulations to make this work, she is not in favor of that. Ms. Campbell said she hadn't thought of the whole thing about whether there could be other buildings like garages because all of a sudden we have houses on all sides and it feels like a denser neighborhood than she ever thought. She stated she thought they would be protected by one house on 10 acres and she is confused by what the regulations really mean.

Ms. Hallock stated they bought land there in 1968 and they have lived there since 1969. She said she would like to question the accessory apartment, building, being built so far from the original structure. She said she would like to know the history of this variance in the Town of Jericho, if something so far from the original house has been allowed before. Ms. Hallock stated to her it is not an accessory apartment, it is a separate house. She said skimming through the zoning; it seems it should be on a close lot to the original house.

Ms. Frost discussed some history of the property, saying it was originally 19 acres. She discussed the previous ownership and types of activities that were not allowed during that ownership. She said now we have given a variance so that there are two houses on less than 20 acres and now yet again we are going to consider yet another conditional use for a free standing structure called an accessory apartment, yet it is really a freestanding home. Ms. Frost said it will be like two houses on less than 10 acres.

Mr. King said we do have a couple of questions, as well as lots of comments for the record. He stated several of the questions center around the definition of accessory apartment. He pointed to the wording in the regulations, which is at the beginning section in the general definitions which defines an accessory apartment. Mr. King stated what we are being asked is does this proposal comport with the definition of accessory apartment. He said there was another question about accessory structures in general; saying the definition of an accessory structure in general is incidental and subordinate in size to the primary use, except barns are allowed to be bigger than the primary use, and on one lot.

Mr. King said there are rules about setbacks and so on, but any landowner in Town who has a conforming lot is allowed to build as many structures as they want that are accessory, as long as they get conditional use approval or a permit. He discussed what is allowed, noting you often see that pattern of development in the Village. He said regarding the question about what the rules actually require or allow; that is the definition that we are working under. Ms. Patrick noted if he wanted to build an accessory apartment that was attached to the primary dwelling that would not require a hearing. She said this is a hearing because he is proposing an apartment that is separate from the primary dwelling and it is in the Agricultural Zoning District. She said the shape of the parcel is unusual, but that doesn't mean that he can't build an apartment on that lot.

Ms. Patrick stated it doesn't matter where that accessory apartment is on his lot. She said it is very strange that there is a 0.3 acre lot in the middle of his, but there is no exception regarding irregular lot size and where an apartment should be located. Ms. Frost asked for the definition of accessory apartment. Mr. King read the definition from the regulations. Ms. Lahiff asked for an answer on the 750 square foot. Mr. King stated that one of the things we are being asked to decide in this deliberation is what the Planning Commission meant when they wrote those words. He said it is true that the wording is a little weird and we will have to discuss that. He said we agree the wording is confusing, but that is one of the things we have to decide.

Ms. Patrick stated this is a recent amendment to the Jericho Land Use and Development Regulations. Ms. Lahiff asked if the DRB has access to the people who writes the amendments. Mr. King said we know who wrote them, but that doesn't help us because we have to go by what the regulations actually say, not by what someone else says they actually meant. Mr. Hibbs asked if our comments have any bearing. Mr. King responded that of course their comments have bearing, this is a conditional use hearing and we listen to all of the evidence. He noted the definitions are what they are.

Mr. West stated there was one question about the use of the property by animals as a go through to a nature area. He said it was a question as to whether this would inhibit the preservation of the natural or historical importance of the property. Mr. King said he is not sure how to answer the question. Mr. West stated the area has not been designated by the Town by a corridor for animals or a special area. Ms. Patrick said it is not part of an overlay district. Mr. Flynn asked if there is a map showing the location of deer yards. Ms. Patrick said she can pull up the map for deliberation to see if there is an overlay.

Mr. Flynn asked if the Conservation Commission usually looks at these and comments. Ms. Patrick said the Town Planning tool that she has access to would show if this was a specifically designated deer wintering area or a natural corridor. She said she doesn't know if that affects restriction in development. Mr. King stated we don't have any testimony from them on this application. He noted that sometimes they comment on applications and sometimes they don't.

Mr. West said one more thing that could be seen as a question is about the accessory apartment being built so far from the original structure. He stated that according to the regulations, it just has to be on the same parcel. Mr. King said that is he read the definition because it answered several related questions. Mr. York said there was a question about any subsequent use of the apartment. Mr. West said there is a section saying that it is for family only. Ms. Patrick referred to Section 4.7.3.2. She said Mr. Mahar has proposed that his parents will reside in the accessory apartment. She stated it is a requirement that an accessory apartment be occupied by the owner or a member of the owner's family.

Mr. West said they should expect a condition that future use will also follow the regulations. Mr. King agreed that it has to because it is an exception for that use. He referred to Section 4.7.3 of the regulations, which includes the definition of the physical size, also has the rest of the conditions that make it be an accessory apartment. He said that is why we are here because Section 4.7.3.6 requires that in the Agricultural, Forestry, Rural Residential or Commercial Districts, if there is a new accessory structure, that triggers conditional use approval, so that is why we are here, otherwise it would just be a permitted use.

Ms. Patrick said there was a question about the flood zone. She stated where the Mill River is, surrounding is a Special Flood Hazard Zone, which is defined by FEMA as Zone A. She said it does not establish a base flood elevation, so what you are saying about the flood from the torrents of rain, they have not established that base flood. Ms. Patrick stated that is why there is a broad River Overlay District in this area, saying it is actually stricter than what the State established. She said where the applicant is putting this house is actually pushed back on the maps we were presented with; so that is actually preserving that area a little more. She said he is further back from the river than he would have been if we were going by the State requirements; Jericho actually has a pretty restrictive River Overlay District. Mr. West noted that was part of the question we asked early on about the boundary for the River Overlay District.

Mr. King closed the hearing. He said the applicant will receive an answer within 45 days, but it is usually sooner.

2. Approval of meeting minutes from 05/14/2015.

The DRB tabled approval of the minutes from May 14, 2015, agreeing to approve them by e-mail. Ms. Patrick noted there are no meetings scheduled for the month of June.

The Development Review Board entered deliberative session at 7:53 p.m.